



THE UNIVERSITY OF
SYDNEY

Duncan Ivison

Chair, Confucius Institute Board

5 March 2021

Mr Iain Anderson
Acting Secretary
Attorney-General's Department
3-5 National Circuit
Barton ACT 20600

By email: transparency@ag.gov.au

Dear Mr Anderson,

Submission regarding a provisional transparency notice

Thank you for your letter of 26 February 2021 inviting me, as Chair of the Board of the Confucius Institute at the University of Sydney (the Institute), to make a submission regarding a provisional transparency notice issued in accordance with subsection 14B(1) of the *Foreign Influence Transparency Scheme Act 2018 (the Act)*.

I acknowledge that the notice states that the Institute is a *foreign government related entity* as defined in section 10 of the Act. I note further that, for the Act's purposes, you have determined that the relevant *foreign principal* is the Chinese International Education Foundation and that the relevant *foreign jurisdiction* is the People's Republic of China.

As you are aware, on 11 August 2020, I complied with a notice requiring information and documents issued under subsection 46(2) of the Act, providing extensive material relating to the governance, management, operation and activities of the Institute. That submission included correspondence between the Confucius Institute Headquarters (Hanban) and the University of Sydney regarding Hanban's decision to transfer the operations of Confucius Institutes to a newly formed *Chinese International Education Foundation* (Foundation) and establish a *Centre for Language Education and Cooperation (CLEC)* responsible for other Chinese education language programs.

I also advised that the University of Sydney was in the early stages of discussions to amend or replace the existing agreements, which were originally intended to cover the five years 2018-23. On Friday 22 January 2021 I provided Mr Robert Crofts from your Transparency Framework Branch with a verbal update on the University's progress towards establishing a single new agreement and governance framework for the Institute with Fudan University only, not with the Foundation, and advised that we would provide the department with a copy of the new agreement with Fudan once finalised.

I am pleased to confirm that the **attached** agreement between Fudan University and the University of Sydney commenced on 3 March 2021. I have summarised below some of the key elements of the new agreement, which we believe ensure that the Institute is not a foreign government related entity as defined in the Act:



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- *The Foundation is not a party to the agreement* - the agreement is between Fudan University and the University of Sydney only.
- *Neither Fudan nor the Foundation exercises control over the Institute's Board* - the Institute is governed by a Joint Board comprising three members each appointed by the University of Sydney and Fudan University, and one independent member who must be an Australian citizen with command of Mandarin.
- *Neither Fudan nor the Foundation can exercise total or substantial control over the Institute and its activities* - the University of Sydney has principal responsibility for, and final decision-making authority in relation to, the organisation, routine operation and management of the Institute and its activities.
- *The University of Sydney receives no funding from the Foundation or Fudan University* – Fudan University's only financial obligation is to pay the salary and other costs of the Fudan Teaching Scholars during their terms of service.

While not directly related to the provisional transparency notice, the new agreement makes it clear that the Institute's focus is entirely on the delivery of non-award Chinese language courses and cultural exchange programs. The agreement also explicitly prohibits the Institute from undertaking any activities of the type that are registrable under the Act.

I request that you reconsider the accuracy of the provisional transparency notice in light of the new agreement between the University of Sydney and Fudan University, which replaced the previous renewal agreements with Hanban and Fudan on 3 March 2021.

In closing, I should also advise that the University will shortly notify the Minister for Foreign Affairs and Trade about its new agreement with Fudan University in accordance with the requirements of the *Foreign Relations (State and Territory Arrangements) Act 2020 (Cth)*.

Thank you for considering this submission and please do not hesitate to contact me should you require any further information.

Yours sincerely,

Professor Duncan Ivison
Chair, Confucius Institute Board

Attachment Agreement between Fudan University and the University of Sydney, in respect of the Confucius Institute at the University of Sydney, 3 March 2021



AGREEMENT BETWEEN FUDAN UNIVERSITY, PEOPLE'S REPUBLIC OF CHINA

AND

THE UNIVERSITY OF SYDNEY, AUSTRALIA

(CRICOS 00026A)

IN RESPECT OF

THE CONFUCIUS INSTITUTE AT THE UNIVERSITY OF SYDNEY

In order to strengthen the partnership between Fudan University and The University of Sydney

and

To strengthen educational cooperation between China and Australia, and to support and promote the study of Chinese language and culture in Australia

and

Recalling that the Confucius Institute Headquarters of China (the "**Headquarters**") and The University of Sydney ("**Sydney**") signed an agreement to establish the Confucius Institute at Sydney (the "**Institute**") on 19 October 2007 ("**Headquarters Agreement**")

and that

Fudan University ("**Fudan**") and Sydney (together, "**the Universities**") signed a supplementary agreement to cooperate in the establishment of the Institute and the management of its activities on

20 December 2007 and amended and signed that Agreement on 18 September 2018 ("**Fudan Agreement**").

Both Universities now wish to continue this cooperation, to identify the rights and responsibilities of Fudan and Sydney in the ongoing management of the Institute during the term of this Agreement, and to build on and expand the partnership in respect of the Institute. They wish to restate as follows:

Article 1 Nature and Scope of Activities

1. The Institute, with a focus on Chinese language training and cultural exchange, may carry out the following activities, having regard to the laws of Australia and Sydney's policies, each to the extent they apply to the Institute and as updated from time to time:
 - (a) Assist the teaching of the Chinese language in courses offered to the community but not in courses forming part of Sydney's degree programs;
 - (b) Conduct language and cultural exchange activities, including the organisation of community student visits to China;
 - (c) Develop Chinese language education resources for use in language classes offered to the community but not in courses forming part of Sydney's degree programs;
 - (d) Other activities as agreed by the Universities, in writing, from time to time.

The Parties acknowledge that this Agreement does not affect the autonomy of Sydney or Fudan, nor their respective intellectual and academic freedom, including in respect of the Institute's operations and activities.

The Parties confirm that the activities contemplated by the Institute at Sydney under this Agreement (either as described in this Article or as may be agreed hereafter in writing under the terms of this Article) do not include activities that are registrable under the Foreign Influence Transparency Scheme Act 2018 (Cth).

Article 2 Organisation, Operation and Management

1. Joint Board

Sydney and Fudan shall establish a Joint Board, representing both universities, to have an advisory and consultative role in relation to the activities of the Institute. The following provisions shall apply to the operation and functions of the Joint Board:

- (a) The Joint Board will comprise three members of Sydney, and three members of Fudan. Normally, the representatives of Sydney will include the Deputy Vice-Chancellor (Research), Pro Vice-Chancellor (Global Engagement) and Head of School of Language and Cultures, while the representatives of Fudan will include the Vice President (International), the Director of the Global Partnerships Office and Deputy Director of Confucius Institute Affairs Office. The Joint Board will also include one independent member, who will be an Australian citizen with command of the Mandarin language. The Sydney DVCR will chair the Joint Board. The Fudan VPI will be deputy chair.
- (b) A meeting of the Board shall be held at least twice a year, primarily to review the work of the preceding year and to discuss with a view to reaching agreement through consensus on the work plan for the following year.

- (c) Between such meetings, the members of the Joint Board resident in Australia shall meet regularly to receive reports from the Institute Manager about its activities, consider and advise the operations and development of the Institute. In the event that the chair of the Joint Board determines that a matter has arisen which is of significance to the continued operation of the Institute ("critical issue"), the chair shall convene a meeting of the Joint Board to consider and resolve the critical issue.

2. Institute Management Committee and the operation of the Institute

- a) Sydney will take principal responsibility for the organisation, routine operation and management of the Institute.
- b) The Institute will be managed by the Institute Manager who shall be appointed by Sydney. The Institute Manager will report to the Pro-Vice-Chancellor (Global Engagement) and shall manage the Institute in accordance with the regulations, policies and directions of Sydney.
- c) The Institute Management Committee will be chaired by the Pro-Vice-Chancellor (Global Engagement) and include the Institute Manager, the Fudan Teaching Scholar, the Director of Partnerships in the Office of Global Engagement, the Chair of Department of Chinese Studies and a representative of Office of General Counsel. The Committee will meet once every two months. The Institute Management Committee will determine the content of the curriculum and the manner of instruction for all programmes administered by the Institute subject to Australia's relevant laws and regulation and Sydney's policies and its decisions on those matters will be final.
- d) Subject to approval by Sydney, Fudan shall nominate and appoint a Fudan Teaching Scholar to work at the Institute. The Institute's teaching team (including the Fudan Teaching Scholar) will report to the Institute Manager. The Fudan Teaching Scholar will work with the Sydney Pro-Vice-Chancellor (Global Engagement) and Fudan VP International to develop academic performance goals. Chinese citizens working for the Institute in Australia shall be subject to the laws of Australia and Sydney's applicable policies.

Article 3 Rights and Obligations

1. Fudan shall:

- (a) Pay the salary and other costs of the Fudan Teaching Scholar during his or her term of service. The Fudan Teaching Scholar will teach beginner, intermediate and advanced Chinese language courses through the Confucius Institute at Sydney but not to students enrolled in the study of Chinese language as part of a degree program offered by Sydney.
- (b) Work with Sydney to obtain support for the activities of the Confucius Institute as outlined in Article 1 of this Agreement;
- (c) Be responsible for getting permission from the 'Confucius Institute' brand-owner for the Institute to continue to use the 'Confucius Institute' brand;
- (d) Receive and support visiting delegations from the Institute, including students and other groups; assist applicants for Confucius Institute Scholarships and the China Studies Program, and provide support for any other programs agreed between the universities from time to time; and send Chinese Teachers to work for the Institute.

2. Sydney shall:

- (a) Work with Fudan to obtain support for the activities of the Confucius Institute as outlined in Article 1 of this Agreement, with the goal of encouraging more students to progress to advanced Mandarin Chinese language classes;
- (b) Provide fixed office space and appropriate sites for teaching and will be responsible for their management and maintenance;
- (c) Provide necessary management and administrative personnel (full-time or part-time) for the running of the Institute and be responsible for payment of its local employees' salaries.
- (d) Assist Chinese personnel with visa applications and residence procedures;
- (e) Subject to Sydney interviewing and approving the Fudan Teaching Scholar and any other Chinese Teachers sent by Fudan to work for the Institute, they shall have the status of an honorary appointment to Sydney conferred upon them and be subject to the terms and conditions which attach to such appointments in accordance with the ordinary practices of Sydney for the time being;

ARTICLE 4 INTELLECTUAL PROPERTY

1. The Confucius Institute shall abide by relevant laws and regulations in the use of intellectual property owned by other parties. Any intellectual property developed or created through the activities of the Institute ("**Institute IP**") will be owned by the university who created or developed that IP, unless otherwise agreed by the universities in writing.
2. If a dispute arises between Fudan and Sydney with respect to institute IP, Article 9 of this Agreement will apply to that dispute.

ARTICLE 5 REVISION OF THE AGREEMENT

During the term of this Agreement, revisions to this Agreement or a supplementary agreement can be entered into with the consent of both universities. All revisions shall be made both in English and Chinese in writing and shall take effect after being signed by authorised representatives of each University.

ARTICLE 6 TERM OF THE AGREEMENT

The Agreement shall enter into force upon signature by both Parties. If the dates of signature are different, the later date shall prevail.

This Agreement starts of the date it is signed by the last Party to do so and will continue until 31st December 2023 ("**Initial Term**"), unless terminated earlier as set out in Article 11. If either Party does not wish to extend the Agreement beyond the Initial Term, it must notify the other Parties in writing during the sixty (60) days before the end of the Initial Term, otherwise the Agreement will automatically be extended for another five (5) years.

ARTICLE 7 FORCE MAJEURE

In the event of a national emergency, war, strike or natural disaster or any other cause beyond the control of the universities that renders the performance of this Agreement temporarily or permanently impossible ("**Force Majeure Event**"), the affected party will be released from its responsibilities under this Agreement during that Force Majeure Event. In such a circumstance, the affected party must inform the other party in writing that it is unable to meet its responsibilities, and duly take reasonable measures to mitigate the loss of the other party.

ARTICLE 8 COMPLIANCE WITH LAWS

The Parties (including their respective employees, contractors and volunteers), will comply with all relevant local laws (including taxation and privacy laws) and with all relevant local University statutes, regulations and policies of Sydney and Fudan applicable to their activities under this Agreement.

ARTICLE 9 EXPIRY AND TERMINATION

1. This Agreement may expire or be terminated in any one of the following cases:
 - (a) Where either party does not wish to extend the term of this Agreement in accordance with Article 6, the Agreement will end at the end of the Initial Term;
 - (b) Either party may terminate this Agreement without cause by giving the other party notice in writing at least two (2) months before the intended date of termination;
 - (c) If a party is unable to meet its obligation due to a Force Majeure Event for a period of three (3) months or more, either party may terminate this Agreement by giving the other party notice in writing;
 - (d) Where the actions of a party severely harm the image and reputation of the Institute and the dispute is unable to be resolved as set out in Article 9, the other party may terminate the Agreement by giving the first party notice in writing;
 - (e) A party may terminate this Agreement with immediate effect if the other party breaches a material term of this Agreement and does not remedy that breach within twenty-eight (28) days of being notified in writing by the other party to do so.
2. On termination or expiration of this Agreement for any reason the University of Sydney will make reasonable efforts to facilitate the transfer or transition of any ongoing commitments related to the Confucius Institute (e.g. teaching commitments for enrolled students).
3. The termination of this Agreement shall not affect other separate agreements, contracts or programs between the Universities.
4. The termination or expiry of this Agreement for any reason does not affect the accrued rights or remedies of either party.

ARTICLE 10 DISPUTE SETTLEMENT

1. If any dispute or difference arises between the Universities in relation to this Agreement, the Universities agree to:
 - (a) give the other party notice in writing of the dispute or difference; and
 - (b) negotiate in good faith using their best endeavours to resolve the dispute or difference.
2. If the universities are unable to resolve a dispute or difference in accordance with Article 10.1 within thirty (30) days, they agree to refer the dispute to, in the case of Sydney, the Deputy Vice-Chancellor (Research) or such other person nominated by the Vice-Chancellor, and in the case of Fudan, the person nominated by Fudan.
3. If the universities are unable to resolve a dispute or difference in accordance with Article 10.2 within thirty (30) days, then the matter may be submitted to an arbitration institution mutually agreed by the universities. The costs of submission to the arbitration institution agreed pursuant to this clause will be met by the Universities.

4. Each Party must continue to perform its obligations under this Agreement irrespective of the existence of a dispute or difference.

ARTICLE 11 MISCELLANEOUS

This Agreement is undertaken in lieu of and replaces all previous agreements either between the universities or otherwise in connection with the establishment and operation of a Confucius Institute at Sydney

Other matters not set forth by this Agreement shall be addressed through friendly and equal consultations between the Universities.

The undersigned hereby are duly authorised by each institution to execute this Agreement.

This Agreement is made in two copies and each copy is written in both Chinese and English. Both texts shall have the same effectiveness.

The University of Sydney

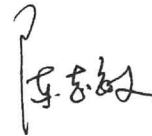


Vice-Chancellor & Principal

Prof Stephen Garton AM

Date: 2 March 2021

Fudan



Vice-President

Prof Chen Zhimin

Date: 3, March. 2021